

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 88364-001

v

Blue Cross Blue Shield of Michigan  
Respondent

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Issued and entered  
This 12<sup>th</sup> day of May 2008  
by Ken Ross  
Commissioner

**ORDER**

**I**

**PROCEDURAL BACKGROUND**

On March 7, 2008 XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on March 14, 2008. BCBSM submitted its position paper to the Commissioner March 25, 2008.

Because the appeal involved medical issues, the Commissioner assigned the case to an independent review organization which provided its recommendations to the Commissioner on April 8, 2008.

**II**

**FACTUAL BACKGROUND**

The Petitioner, who was born in 2004, receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) under its Blue Choice Managed Health Care Group Benefits Certificate (the Certificate). The coverage is provided through Petitioner's mother's employer.

The Petitioner was born with CHARGE syndrome, a group of congenital abnormalities affecting the eyes, ears, genitals, heart, and renal system, and causing growth deficiencies. He has bilateral cleft lip, swallow dysfunction, and gastroesophageal reflux. He has had palate repair, PEG tube placement, and tracheostomy and has a history of aspiration pneumonia.

Since coming home from the hospital in October 2004, Petitioner has required extensive private duty nursing care. BCBSM coverage for Petitioner's family became effective July 1, 2006. The Petitioner received private duty nursing from July 3, 2006 through November 15, 2007. BCBSM paid \$16,439.84 for this care but now believes its payments were made in error. The Petitioner believes that BCBSM is required to pay for all of this care. The amount not paid by BCBSM for the private duty nursing during this time was \$95,299.54.

The Petitioner appealed BCBSM's denial of coverage. After a managerial-level conference on December 11, 2007, BCBSM did not change its decision and issued a final adverse determination on January 8, 2008.

### **III ISSUE**

Did BCBSM properly deny coverage for the Petitioner's private duty nursing provided from July 3, 2006 through November 15, 2007?

### **IV ANALYSIS**

#### **BCBSM's Argument**

BCBSM stated in its position paper the reason why it denied Petitioner's claim: "our medical consultant reviewed the documentation provided and determined the services were not medically necessary because they were custodial in nature and therefore were not required to be performed by a skilled nurse."

#### **Petitioner's Argument**

Petitioner's parents argue that BCBSM has denied coverage for the great majority of the

private nursing provided from July 3, 2006 until November 15, 2007 based on the determination of BCBSM's medical consultant who apparently ignored the information provided by the Petitioner's doctor and the provider of care.

A new provider began supplying the Petitioner's private duty nursing care beginning November 18, 2007. Prior approval was received for this care and payment has been received from BCBSM since then.

The Petitioner does not think it makes sense for BCBSM to deny the private duty claims provided from July 2006 to November 2007 while covering the later care.

#### Commissioner's Review

The medical issues in this case were presented to an IRO for analysis as required by Section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer in this matter is certified in pediatrics and pediatric neurology, and has been in practice for more than 10 years.

The IRO physician reviewed the medical records and concluded that the Petitioner qualified for 12 hours of skilled nursing care per day according to BCBSM's criteria. The Petitioner also required private duty nursing services during the period at issue in this appeal due to the medical complications of his CHARGE syndrome. The IRO reviewer concluded that the private duty nursing services provided the Petitioner from July 3, 2006 until November 15, 2007 were medically necessary for treatment of his condition.

The IRO reviewer's recommendation is based on extensive expertise and professional judgment and the Commissioner finds no reason to reject it. Therefore, the Commissioner accepts the IRO reviewer's conclusion that the Petitioner's condition required skilled nursing care and the private duty nursing care provided the Petitioner from July 3, 2006 until November 15, 2007 was medically necessary.

### **V ORDER**

Respondent BCBSM's January 8, 2008, final adverse determination is reversed. BCBSM is

required to provide coverage within 60 days for the Petitioner's private duty nursing provided from July 3, 2007 through November 15, 2008, subject to any applicable deductibles, co-payments, or benefit limits. BCBSM shall provide the Commissioner with proof of such coverage no later than seven days after payment is made.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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Ken Ross  
Commissioner